

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

LONNIE MASSEY

PETITIONER

VS.

CIVIL ACTION NO. 3:14cv113-CWR-LRA

JOHNNIE DENMARK and
MISSISSIPPI ATTORNEY GENERAL

RESPONDENTS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the court pursuant to the Report and Recommendation of United States Magistrate Judge Linda R. Anderson entered on April 30, 2014 and which clearly notified the respective parties in the above-styled and numbered cause that failure to file written objections to the findings and recommendations contained within fourteen (14) days from the date of filing would bar further appeal in accordance with Title 28 U.S.C. § 636 and Fed. Rule Civ. P. 72(b)(2), and this court, finding that there has been no submission of written objections by any party, hereby adopts said Report and Recommendation as the order of this court.

Alternatively, to the extent that Petitioner's Motion to Present Newly Discovered Evidence is construed to be his objection, it is denied as the Petitioner has failed to demonstrate that any portion of the Magistrate Judge's decision is clearly erroneous or contrary to law. See Fed.R.Civ.P. 72(a). Furthermore, the Report and Recommendation clearly and correctly holds that that the Petitioner has failed to demonstrate that he has exhausted all claims in state court prior to requesting federal collateral relief. He has not demonstrated that he has submitted the factual and legal basis of every claim to the highest available state court for review, *see, Carter v. Estelle*, 677 F.2d 427, 443 (5th Cir. 1982), and on that basis alone his petition is due to be dismissed without prejudice for failure to exhaust available state court remedies. The record reflects that Petitioner has sought relief

from the Mississippi Court of Appeals, *see*, Docket Nos. 16 and 16-1, but until he presents the issue to the Mississippi Supreme Court, he has not submitted the issue to the state's highest court. For these reasons, Petitioner's Motion to Present Newly Discovered Evidence [Docket No. 14] must also be denied.

SO ORDERED, this the 29th day of August, 2014.

s/Carlton W. Reeves
UNITED STATES DISTRICT JUDGE